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On April 18, 2000, Complainant Melissa D. Ambrose filed a charge of employment discrimination against her employer, Respondent H. H.& S. Enterprises D/B/A Wingwalkers and Andrew Hayes. On March 20, 2001, the Illinois Department of Human Rights filed a Petition for Hearing to Determine Complainant's Damages with the Illinois Human Rights Commission which alleged Respondent failed to file a verified response to the charge and failed to attend a fact finding conference in this matter. On April 11, 2001, a three member panel of the Commission issued an order of default against Respondent and transmitted the case to the Administrative Law Section to conduct a hearing and determine the amount of damages to which Complainant was entitled. A hearing was held in this matter on June 12, 2001. Complainant represented herself. No one appeared on behalf of Respondent. Respondent is now in default. This matter is now at issue.

Complainant Melissa Ambrose did not have an attorney to represent her at hearing, but she testified on her own behalf. Her uncontested testimony revealed she had been employed as a waitress by Respondent at Wingwalkers restaurant for six

months. Complainant testified that during that time period, the owner sexually harassed her daily by touching her or speaking inappropriately to her. She further testified she was traumatized by the harassment and continues to be afraid of Respondent Andrew Hayes even though she no longer works for him. Complainant stated she was fearful of Mr. Hayes because of his known criminal history.

Respondent's case

Respondent was given proper notice of the hearing scheduled in this case, but failed to appear. Therefore, no evidence was presented on Respondent's behalf.

Findings of Fact

The following facts are those, after having considered all of the evidence in the record, I found were proved by a preponderance of the evidence. Assertions made in the record which are not addressed in this decision were determined to be unproven or immaterial to this determination:

1. Complainant, Melissa D. Ambrose, filed Charge No. 2000SF0553 with the Department of Human Rights on April 18, 2000, alleging to have been aggrieved by practices of sexual harassment and sex discrimination prohibited by sections 2-102(A) and 2-102(D) of the Act.
2. On March 20, 2001, the Department of Human Rights filed a Petition for Hearing to Determine Complainant's Damages.
3. On April 11, 2001 the Commission granted the Department's petition and issued an Order of Default against Respondents. The Commission also transmitted the file to the Administrative Law Section to conduct a hearing consistent with its Order.
4. As such, the parties are subject to the jurisdiction of the Illinois Human Rights Commission and this administrative law judge pursuant to the Human Rights Act, 775 ILCS 5/8-101 *et seq.*

5. Complainant Melissa D. Ambrose was employed as a waitress by Respondent H. H. & S. Enterprises d/b/a Wingwalkers from September 1, 1999 to February 20, 2000, and earned \$3.45 plus tips. Complainant's estimated earnings were \$250 per week.
6. From September 26, 1999 to February 20, 2000, Respondent Andrew Hayes, owner of Wingwalkers, sexually harassed Complainant by subjecting her to inappropriate sexual comments and inappropriate sexual conduct.
7. Complainant was upset by Hayes' actions and resigned her employment on February 20, 2000.
8. On March 13, 2000, Complainant became employed by Value City Department Store and remained employed there until June 10 or June 12, 2000. She earned \$5.45 per hour.
9. On June 12, 2000, Complainant was laid off from her job at Value City and received unemployment until she obtained another job in August, a period of approximately seven weeks.
10. In August of 2000, Complainant accepted employment with Step by Step Day Care and earned \$5.70 per hour.

Conclusions of Law

1. Complainant Melissa D. Ambrose is an "aggrieved party" as defined by Section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101et seq.
2. Respondent H. H. & S. Enterprises d/b/a/ Wingwalkers and Andrew Hayes is an "employer" as defined by Section 2-101(B)(1)(A) of the Illinois Human Rights Act, 775 ILCS 5/1-101et seq, and is subject to the provisions of the Act.
3. Complainant proved by a preponderance of the evidence that she is entitled to back pay from February 20, 2000 to August 1, 2000.
4. Complainant failed to prove she was entitled to damages for emotional distress.
5. Complainant is not entitled to attorney's fees because she was not represented by an attorney in this matter.

Discussion

Section 8(A)-104 of the Illinois Human Rights Act provides that Complainant is entitled to damages upon a finding of a civil rights violation. The Illinois Human Rights Commission issued an order of default against Respondents on April 11, 2001 establishing liability and entitling Complainant to damages for sex discrimination and sexual harassment as defined under the Human Rights Act. In this case Complainant requested actual damages in the amount of \$3, 060.00 plus interest, \$ 20, 000.00 in damages for emotional distress and a cease and desist order against Respondents prohibiting further sexual harassment discrimination.

During the hearing Complainant provided no documentary evidence to support damages for her emotional distress. Therefore, I repeatedly asked Complainant to provide me with the facts surrounding the inappropriate touching and comments she was subjected to by Andrew Hayes so that I could determine how she was affected by his behavior and make an appropriate award for emotional distress. Even when questioned, Complainant could not provide me with the facts needed to award emotional distress damages to her. It is true Complainant provided me a letter she drafted to explain her loss of interest in relationships with men, sleepless nights and nausea. However, those reactions appear to have only arisen out of fear of Respondent Hayes because of his reputation of having a prior criminal history and not from sexual harassment.

Even though Complainant did not establish damages for emotional distress, she did a commendable job establishing an entitlement to back pay. In doing so, Complainant demonstrated that she earned \$250.00 while employed by Respondent. (Tr. p. 17) The evidence further showed Complainant earned \$218.00 per week while employed at Value City Department Store and \$ 228.00 while employed by Step by Step day care.

The Act defines "actual damages" as those damages "reasonably determined by the Commission for injury or loss suffered by the complainant." 775 ILCS 5/8A-104(B).

Through her testimony at hearing, Complainant established she was entitled to a portion of the back pay she sought from Respondent. Complainant sought back pay from the date of her constructive discharge from Wingwalkers on February 20, 1999 until the date she obtained employment at Step by Step Day Care. Although Complainant's testimony and her written calculations of back pay do not coincide, with a close examination of the record it is possible to determine the appropriate amount of back pay to which Complainant is entitled.

Complainant properly mitigated her damages when she obtained other employment on March 13, 2000 at \$ 5.45 per hour, for forty hours per week. She testified she was laid off from her employment on June 12, 2000 and obtained other employment in August 2000. For purposes of this order I used the date of August 1, 2000 to calculate her unemployment compensation and back pay because Complainant could not give me a specific date in August when she became employed by Step by Step Daycare. Based on that date I calculated that Complainant received unemployment benefits in the amount of \$ 51.00 per week for seven weeks which will be subtracted from what she would have earned had she been working at Wingwalkers. The calculations for Complainant's requested back pay are outlined below:

February 20, 2000 to March 12, 2000 = 4 weeks at \$ 250.00/week

Sub Total: **\$1000.00**

March 13, 2000 to June 12, 2000 = \$218.00/week minus \$ 250.00/week

= \$ 32 per week for 12 weeks

Sub Total: **\$ 384.00**

Unemployment compensation from

June 13, 2000 to August 1, 2000 = \$250.00/ week minus \$51.00/week received
from unemployment insurance
= \$199.00/week for 7 weeks

Sub Total: **\$1393.00**

Total Back Pay Award: **\$2777.00**

Determination

Complainant Melissa D. Ambrose is entitled to damages from Respondents H. H. & S. Enterprises d/b/a/ Wingwalkers and Andrew Hayes in the amount of \$2777.00 as a result of a default order entered against Respondents by the Commission on April 11, 2001.

Recommendation

Based on the above findings of fact and conclusions of law, I recommend the Illinois Human Rights Commission enter a final order in favor of Complainant on the issue of back pay and further recommend:

1. H. H. & S. Enterprises d/b/a/ Wingwalkers and Andrew Hayes pay to Melissa D. Ambrose back pay in the amount of \$2777.00 plus interest.
2. H.H. & S. Enterprises d/b/a/ Wingwalkers and Andrew Hayes cease and desist from practices of sexual harassment and sex discrimination prohibited by sections 2-102(A) and 2-102(D) of the Act.
3. The recommended relief in paragraphs 1 and 2 is stayed pending the issuance of a final Commission order.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Administrative Law Section

ENTERED THIS 16TH DAY OF JANUARY, 2002.